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THE
C R I S I S,
OR
REFLECTIONS
ON THE
PROPOSED SETTLEMENT
OF THE
BRITISH GOVERNMENT.

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BRITISH GOVERNMENT.

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THE
C R I S I S, &c.

IN this strange and eventful juncture, when subjects of the most anxious importance seize the general mind, and new questions of the greatest magnitude, and most alarming consequence, solicit our attention; I flatter myself I shall be excused for trespassing on the public, with some reflections on the present state of the *British* government, chiefly calculated for the meridian of this country. Whether a sincere regard and tender attachment to our gracious sovereign, or an outrageous ambition, and insatiable thirst of power has urged forward the consideration of abstract propositions, teeming with heat, and violence, and unreasonable contention, it is not for me to say,

but of this I am confident, that were his Majesty, with the eye of returning intellect to look abroad, for a moment, and see the wound which has been inflicted on the royal prerogative, and the daring blow which has been aimed at the title, by the lineal descent of the crown, in his august line ; he would shrink back with surprize and abhorrence ; but should he perceive that this was done under the specious pretence of affection to his person, and zeal for his interests and those of the constitution, how would his indignation rise against the boldness and hypocrisy of such an attempt.

Speculative questions and abstract propositions, whether in religion or politics, are observed to irritate and inflame men's passions the most violently, and excite the most rancorous disputes, and outrageous animosities ; a recent proof of this we may find, in the heats which at this day are excited, if I am not misinformed, in the sister kingdom, by the discussion of propositions important indeed, most highly important in their subject, but abstract in their nature. It were to be wished for the sake of the *English nation*, that this discussion had not been obtruded on the public ; however as they are now brought forward, and thrown before the people, it is become necessary

necessary to consider them, and if considered at all, they should be considered with a diligent, even with a solicitous and anxious attention. The consideration of these questions embraces the whole form of the British constitution, and may produce the most decisive effects on the general repose and harmony, and permanency of the present established government.

A little learning is a dangerous thing. I am no more a friend to a hasty, jejune, and popular discussion of great political questions, than I would be to a similar examination of the tenets and mysteries of our religion; the result in both cases, will be errors in principle and in practice. I have conversed with many persons on the momentous subjects, which now solicit our attention, and been surprized to find among the generality, not excepting those whose professional pursuits might lead them to form clear and decided notions, on points of constitutional law, the utmost confusion and inconsistency; violent prejudices taking place of principles, and strong assertions substituted for arguments. If the public prints do not misrepresent the debates on some late occasions, the case is much the same in *England*, every man is more ready to pronounce than to enquire, and the form of the constitution is lost and disappears amidst the smoke and mist arising from party heat. That this
should

should happen at such a juncture, and when each individual is liable to be called on to give an account of the faith which is in him, is much to be lamented. I flatter myself he will not seem to deserve ill of his fellow citizens, who shall offer to their consideration such reflections and sentiments on the great national questions before us, as a moderate attention to constitutional principles, may suggest to a very humble capacity; after which I shall beg leave to add a few remarks, which I think peculiarly offer themselves to the the consideration of *Irishmen*.

I proceed now, to consider Mr. Pitt's second Resolution.—That it is the right and duty of the Lords spiritual and temporal, and commons of Great Britain now assembled, and lawfully representing all the estates of the people of this realm; to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his Majesty's said indisposition, in such manner as the exigencies of the case may require. I quote the resolution verbatim, because I think almost every word of it is material, and requires some animadversions. In the first place, I think there is a sort of technical craft, a kind of artifice of special pleading in the description of the assembly whose right is to be declared; it is not simply the Lords and Commons of Great Britain; nor the two estates of parliament: expressions

expressions which as the framer of the resolution knew would not serve the turn, but *Lords and Commons now assembled* and representing all *the estates of the people of this Realm*; words that suppress the real state of the fact, namely, that the two estates of Parliament did simply meet pursuant to a prorogation by the *King*, while in health; and hold out the *magnificent but unfounded, and delusive idea*, of a *great National Convention*, now assembled, in some extraordinary manner, to answer the purpose of the present emergency. I appeal to any man of common candour, whether this be not the obvious sense of the words; and whether there is not here a suppression of truth, a sort of artifice and mistating highly unworthy of the awful occasion, and of the solemnity of national counsels. In the next place this resolution takes for granted a proposition which is not founded in fact, or at least which ought to have been proved before it was assumed as a corner stone on which to found a legislative act. That the two Houses of Parliament, the Lords and Commons of Great Britain, do *fully* represent all the estates of the people of the Realm—It is easier to assert than prove this proposition, as I shall observe hereafter. Mr. Pitt found it necessary to the delusive idea of a convention, the principal support of the Resolution before us; and being well aware that it was

questionable

questionable, slides it in artfully enough as part of a description : I shall lastly observe on the words, *in such manner as the exigencies of the case may require*, that they are much too lax and comprehensive in their meaning to be defended on constitutional grounds. In a Proposition of such vast magnitude, and in a case so new, there should have been the utmost accuracy and precision in the terms which were to declare a great and perhaps an eventful right; instead of which, we have either a gross inattention, or a studied and dangerous uncertainty. The words now before us, in their natural construction, and obvious import, make the two branches of the legislature, in case of the King's indisposition, arrogate to themselves an arbitrary discretion, and unlimited authority, not merely to elect or appoint a Regent to fill up the chasm, but absolutely to dispose of the executive power, to provide *ne quid detrimenti capiat respublica*. So that under this Proposition, worded as it is, and literally taken, the two estates would be warranted to supersede the King entirely, and to substitute for *Kingly*, any other form of government they might think proper. I must add, that this Proposition makes the *House of Commons* pronounce on the power of the *House of Lords*.

So much for the form of Mr. Pitt's second Resolution; but to proceed to the real essence,

sence, the assertion that in case of disability through sickness of a King of *Great Britain*, who has an Heir Apparent of full age to govern and liable to no objection; the two remaining estates of Parliament, have a right to elect any person they may think proper, as Regent during that disability, in prejudice to the claim of the Heir Apparent; or as it has been more strongly and concisely expressed, THAT THE PRINCE OF WALES HAS NO MORE RIGHT TO THE REGENCY THAN ANY OTHER SUBJECT IN THE KINGDOM; I hope to be able to demonstrate, that this Proposition has no foundation in *law* or any constitutional principle; that it is not declaratory of any actual *existing right*, there being none such; but is a change in the form of government, a *democratic innovation*, by arrogating to the two estates of Parliament, newly created and before unheard of, powers.

I must premise, that technical reasonings founded on our municipal law, and arguments drawn from analogy to the case of private property, do not apply to the subject before us. Constitutional cases must be governed by constitutional principles; a certain vital spirit of social union, an informing essential pursuit of the public good, as the road to that is pointed out and defined by certain land marks or forms of political as-

B sociation;

fociation. For instance, the descent of the British crown is hereditary; the Heir Apparent succeeds as of right on the demise of his predecessor; yet is he but a trustee for his subjects, the hereditary descent of power is subject to certain principles of constitution; a tacit compact is understood, that the Prince shall employ his power for the good of his subjects, and if he violates the trust he forfeits his crown. Now in the descent of private property, there is no tacit compact understood; the inheritor is not a trustee for his tenants; he is under a moral obligation indeed, but no positive one, to promote their good, nor will it, should he neglect or refuse to do so, work a forfeiture of his estate. A private individual it is said, can only become civilly dead in two ways; a prince may become politically dead in as many ways as there are possible violations of the original compact. No attainder of the heir of the crown, will bar the succession to the throne, as it doth the descent to a private person; the very descent, by order of birth, will take away any such defect.

I proceed now to enquire, whether the two Houses of Lords and Commons, in case of a temporary disability of the King, have, under the constitution, an inherent right of appointing a Regent, to act in the name and
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on the behalf of their sovereign, during his disability; and shall afterwards offer some arguments, to show, that it must, under our constitution, be incident to the station and rights of the Heir Apparent in case of such disability.

If the Lords and Commons, of the two Houses of the English Parliament, do really possess the power declared in the foregoing resolution, they must be invested with it, as a national convention, virtually comprehending the whole body of the people, all orders of the State; or else it must be their right, as the two deliberate members of a legislature, in which the executive power has a constitutional assent and dissent.

I need not use many words, to prove that the Lords and Commons, in the two Houses of Parliament, are not a national convention. A *national convention* is either an assembly of the whole aggregate of the people; or if their numbers render that impossible, a full and adequate representation, freely and impartially chosen, so that every individual in the kingdom may give his sentiments directly, or indirectly, on the subject of the meeting. But it will be not contended, that the Houses of Parliament do fully and freely represent all the orders of the State. Mr. *Pitt* himself will not maintain this position; he who (though he was an enemy to that measure in *Ireland*) supported the plan for a parliamentary reform in *England*, and
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thereby tacitly acknowledged, that the present House of Commons as it is now elected, is not a full, fair, adequate representation of the people.

Now to examine this claim of power, in the second point of view proposed. As power flows from the people, it must pursue the channels, it must preserve the form and distinction marked out by the people. By them alone the constitution may be recalled, or cancelled; by them alone it can be altered and modified. If any one member of the State could itself assume a new power, or establish an exclusive right, of defining and interpreting those already in existence, there would be a power in the constitution not derived from the people. The two Houses of Parliament, under the constitution, have no power of legislation either distinct or conjointly; they possess it only jointly, with each other, and with the King, the bond that holds them together is the King alone: they then form, as it were, a structure, where each part leans on each, and the whole is maintained, and upheld by a mutual pressure. They are a machine composed of different wheels, each necessary to a perfect and regular motion; and if one be taken away the whole must stop or go wrong. But were the two Houses of Parliament, in themselves, to possess a right of supplying the deficiency of the third Estate, that

that would imply a power of legislation. If they appoint a certain power in the State, they must arm that power properly, they must ordain and enact a deference to its authority, else their appointment would be nugatory; and to do this they must possess a legislative authority. Mr. *Pitt* allows such an appointment to be an act of legislation; for he says, it must be done by bill; and he allows, that the two Houses of Parliament are incompetent to legislate of themselves; for he is obliged to resort to a fiction, and set up a Pageant of Royalty, to give the act of those assemblies the form and validity of law; so that his plan of proceeding is a refutation of his principle.

Every writer on *English* law, who has treated this subject, lays it down, that there can be no beginning of a Parliament, unless the King meets it either in person or by representation; and that the assent of King, Lords and Commons, is necessary to every Act of Parliament. A position solemnly recognized by the Act of the 13th of Car. 2, which declares that the Acts and Ordinances of the two Houses, shall not have the force of laws. These restrictions and limitations the constitution hath wisely ordained, to preserve the executive power from the encroachments of the legislative; and prevent the establishment of tyranny by the union of both in the same hands. “ When (says
“ *Montesquieu*,

“ *Montesquieu*,)* when the legislative and
 “ executive powers are united in the same
 “ person, or same body of magistrates, there
 “ can be no liberty, because apprehensions
 “ may arise, lest the same monarch or se-
 “ nate should enact tyrannical laws, to ex-
 “ ecute them in a tyrannical manner.”—And
 again. “ But if there were no monarch,
 “ and the executive power should be com-
 “ mitted to a certain number of persons se-
 “ lected from the legislative body, there
 “ would be an end then of liberty; by reason,
 “ the two powers would be united, as the
 “ same person would sometimes possess, and
 “ would be always able to possess a share
 “ in both;—Were the executive power not
 “ to have a right to restrain the encroach-
 “ ments of the legislative, the latter would
 “ become despotic; for as it might arrogate
 “ to itself what authority it pleased, it
 “ would soon destroy the other powers.”

These principles of *Montesquieu* are
 adopted and enforced by Sir *William Black-*
stone. The King, says he, is the only branch
 of the legislature that has a separate exis-
 tence, or is capable of performing any act
 when no Parliament is in being. Yet, by
 Mr. *Pitt's* plan the other two branches of
 the legislature are declared to have a sepa-

* See Coke, 4 Inst. Hale of Parliaments, 1 Black.
 Com. 153, Spirit of Laws, vol. 1. p. 221.

rate existence, are enabled to perform acts, and those of the utmost moment. * " It is highly necessary for preserving the balance of the constitution, that the executive power should be a branch, though not the whole of the legislature. The total union of them would be productive of tyranny: the total disjunction of them for the present, would in the end, produce the same effects, by causing that tyranny against which it seems to provide. The legislature would soon become tyrannical, by making continual encroachments, and gradually assuming to itself the rights of the executive power. Thus the long Parliament of Charles the First, while it acted in a constitutional manner, with the royal concurrence, redressed many heavy grievances, and established many salutary laws; but when the two Houses assumed the power of legislation in exclusion of the royal authority, they soon after assumed likewise the reins of administration, and in consequence of these united powers, overturned both Church and State, and established a worse oppression than any they pretended to remedy". If any encroachments of the two Houses of Parliament, by shaking off that constitutional controul, excluding the royal *negative*, which

* 1 vol. p. 229, Com. 1. vol. p. 154.

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like the *Veto* of *Roman* Tribunes, had not any power of doing wrong, but only of preventing wrong being done, and presuming to legislate without the concurrence of the crown, be so formidable; must it not be doubly formidable, as leading by a direct and brief road to tyranny; when the proposed act of legislation, in which the crown is to have no share, no power of rejection, purports no less, than to confer the possession, modify the form, and prescribe the extent of the executive power.

In whatsoever point of view we consider the resolution before us, it is irreconcilable to the principles of the constitution. If the rights of Parliament are to be protected, on the one hand, the King is equally a part of the constitutional government, the lineal descent of the crown is equally necessary to the public good, and therefore is equally established by law; and the authority and prerogatives of the Sovereign, and the regular succession to the throne of the reigning family, are to be guarded and maintained on the other hand; but the power attributed to the two estates of Parliament is inconsistent with the former, and may fatally endanger the latter.

If in case of an indisposition of the King, absenting him (as I may say) from his place in the state, the heir apparent to the crown has no more right to the Regency than any other

other subject, and the two Houses of Parliament have an exclusive right to supply the deficiency of the personal exercise of the royal authority; they must judge of the disability, they must absolutely decide on the circumstance which suspends the personal exercise of royal authority; they alone will thus have an arbitrary power of declaring that there is a deficiency of the executive power, that is to say of superseding the King, accompanied by an arbitrary power of filling up the vacancy, by appointing a Regency or or any other form of government in his place, according as the exigency of the case, of which exigency they themselves are to be the sole judges, may demand. Thus will the King become a tenant at will, wholly dependent on the two Houses of Parliament, and owe his existence and political stability, not to the principles of the constitution, but to the courtesy and forbearance of his legislative masters.

But supposing that the two branches of the legislative power have an exclusive right to provide for the deficiency of the executive as they shall think meet: who shall compel them to exercise their function? if they refuse to do so, must the executive power become extinct? suppose this deficiency to happen, at a time when the lower House of Parliament is not in being, when a dissolution has taken place, and no writs have yet
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been

been issued to call together a new House of Commons; is the executive power to be suspended and anarchy to prevail during the period of a long disability? Perhaps the course of a long life? but the two Houses of Parliament have a right of providing for the event, as they think proper, according to the exigencies of the case; suppose they should vote that the exigencies of the case require that they should assume it to themselves, and so establish an aristocracy, or some other Republican form of government.

If the British crown was made hereditary, it was not for the honour of a particular family or individual, it was from motives of convenience and public utility. The same principle, the same regard to the general weal demands that the personal exercise of the royal power should be hereditary. Every argument drawn from a prospect of the violent disorders, from an apprehension of the civil discord, the furious commotions and fatal anarchy, that vex and debilitate States, when an elective monarchy prevails, may be applied to the case of a Regency. Indeed the principles of the resolution before us, if duly followed up, ought to make the crown itself elective; for if the two Houses of Parliament possessed the supposed right where the King is removed for a time only by indisposition; ought they not, by a parity of reasoning, to possess it, where the
King

King is wholly removed by a demise? I own I cannot see any reason, why they should be invested with it, in the one case, and want it, in the other. It may be said the succession is fixed by statute; so that my argument does not apply: but so is the power of the two Houses of Parliament fixed and defined by statute; but what are statutes opposed to venerable precedents! the precedent of an elective Regency may very easily be applied at a future day, to authorise an elective monarchy, and as the Houses assume to themselves the power of legislation, though a statute has declared that their acts shall not have the authority of law; so they may arrogate to themselves the power of appointing a King; though a statute has settled the succession of the crown.

I know not, in political efficacy, the difference between an elective monarchy, and an elective executive power; and the two Houses of Parliament, judging of the disability, and exclusively competent to supply the deficiency of their King, might find it expedient to supersede his authority, and appoint elective Regents from father to son in *Secula Seculorum*. The very *Sanity* of the King under this resolution becomes the subject of party: he will derive the continuance of his intellects, not from God and nature, but from the sufferance of popular demagogues and parliamentary leaders. A

factionous minister, with the two Houses of Lords and Commons at his devotion, may tyrannize over his master's house, may incapacitate his sovereign, supply the personal exercise of his authority with creatures of his own, in exclusion of the heir apparent; may continue the disability through a long life, and thus, under the name of a Regency, revive in *England* the antient government of the *Mayors de Palais* of *France*, during such an *interregnum*, for so I may call it. An ambitious subject, conspiring with the two legislative bodies, and aided by the influence of the crown, might fortify himself in his post of eminence, might take such measures, as would render the return of the rightful heir to the throne of his ancestors arduous or impossible. Nor let this be thought a visionary fear; our ancestors would have thought an apprehension of what is passing before our eyes, at this moment, equally visionary.

Abstracted from these well-grounded fears; observe what monstrous absurdities must flow, from the doctrine, which thus makes the office of Regent elective. The appointment is to be made by Lords and Commons, says Mr. *Pitt*: but who shall oblige the Lords and Commons to co-operate, and concur in the designation of a person, or the description of his powers? they differed at the time of the revolution, and the Lords were with difficulty induced to yield to the

the Commons. Each assembly is independent of the other; they have no connection, no political unity in the absence of the King; he is the great luminary that harmonizes their courses, and holds them together in one system. In their present situation the Lords have no more connection, no more political co-existence with the Commons of Parliament, than with the Common Council of London. If the Lords and Commons differ, which shall predominate? to what moderator of their disputes, what arbiter of their difference shall they appeal? There may be one Regent for England appointed by the Lords, another by the Commons: their act will not, on any principle that I know of, be binding on *Scotland*, so a third Regent may be chosen by the states of that kingdom. The act of the *British Lords* and Commons has no force or validity to bind *Ireland*; each of the two Houses of Parliament here, may choose a Regent: thus will there be no less than *five Regents* of the British Empire, all independent of each other; co-ordinate and constitutional. And, to add to the melancholy of such an event, as the indisposition of the Sovereign; the country may be torn with discord, and every appointment of a Regent be a trial of party strength.

All the advocates for the resolutions under our consideration, have been guilty of
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an unpardonable fallacy, a fallacy, which is no less than treason against the constitution, and wholly confounds and outrages all our legal ideas of kingly power, on the one hand, and the rights of the people, on the other. They have affected to consider the Lords and Commons, of the two Houses of Parliament, as the people, as the whole body of the nation; and dared to apply to them the precedents of the Convention Parliaments, and the principles of the *restoration* and *glorious revolution*. And the resolution, as I have already observed, is very artfully couched in terms borrowed from the bill of rights, that are applicable to the whole body of the people, and calculated to mislead us, by the delusive notion.

Most of the arguments advanced in support of these resolutions would be incontrovertible, if applied to the nation at large, or to a National Convention, and not to the two Houses of Parliament. They apply to cases where the necessity is such as supercedes the forms of the Constitution, not such, as may be provided for, under the forms of the Constitution.

The power of the representatives and the people are widely different, and ought ever to be kept distinct; if we mean to preserve the power of the crown, and the rights of the people. It will lead to the most fatal consequences, if we apply to the two *Houses of Parliament*,

liament, the maxims and principles, which are true only, with regard to the great body of the people. The power of the PEOPLE is paramount to the Constitution, and supposes a suspension of it. The power of *representatives* is according to the *constitution*, and supposes it existing. The power of the PEOPLE supercedes, regenerates, or creates the law. The power of *representatives* is derived from, subordinate to, maintained and defined by the law. The power of the PEOPLE is primary and absolute; that of representatives delegated and circumscribed. The power of the PEOPLE supposes a deficiency of the crown, a vacancy of the throne, from whatever cause. The power of *representatives* implies a King filling the throne, exercising the power, and performing the functions of royalty. Let it no more be said therefore that Mr. *Pitt* asserts the cause of liberty, that he vindicates the rights of the people. Such opinions can only originate with a profound ignorance of the Constitution. Mr. *Pitt's* doctrines have the direct opposite tendency; they would go to *annihilate the rights of the people, and absorb them in the devouring claims of an aristocracy.*

The friends of Mr. *Pitt's* Resolutions will tell us, that precedents have been laid before them, to warrant the claim of the two estates of Parliament, to a right of appointing the Regent, on such melancholy occasions

casions as the present. Were any thing wanting to stigmatize the weakness of their cause, it would be their production of such precedents, and reliance on them as an authority. They have not been ashamed to resort to times of barbarity and confusion, to the sanguinary and miserable periods that stain the page of history, and while we read, make us shrink back with abhorrence, and blush to think we are men. What shall we say of the cause, that can resort for a justification to the examples of the bold usurpation of the line of *Lancaster*, or the vindictive fury of the house of *York*? What shall we say of those who will quit the steady lights of law and constitution, to guide themselves by the faint dawning, and twilight of those days when mens minds were rude and unformed as the constitution, when *the still voice of law and reason was unheard*;* violence was the measure of right, and every usurper came to the Senate House reeking with blood, and there found an obsequious Parliament waiting to give the form and functions of law to the decisions of the sword! “ The ancient history of England “ (says Hume) † is nothing, but a catalogue “ of reversals and attainders; every thing is “ in fluctuation and movement, one faction “ is perpetually undoing, what was established by another; and the multiplied

* See Foster's Crown Law, 398. Discourse 4th.

† Vol. iii, pa. 29.

“ oaths,

oaths, that each party required for the security of the present acts, betray a perpetual consciousness of their instability." The learned judge *Foster* observes, " that our history furnishes instances, more than enough, of an unwarrantable revenge taken by the prevailing faction; that none of the attainders of those times, ought to be considered as cases from which the principles of the law can be deduced," and adds from lord Hale,† " that Parliaments have always been obsequious enough to the victor, and ready to pass attainders for his safety and their own."

Shall then the precedents of those times, which in the opinion of our best legal writers, cannot furnish principles of law; be sufficient to establish, what is still more important, principles of the constitution? Municipal law is a less complex thing than constitution, the bulwarks of civil liberty, and the bounds of personal security are the first object; they are in some degree understood and fixed, before the functions of the legislature are defined, the balance of the different orders of the state adjusted. Yet in those days even law and jurisprudence were imperfect, the precedents of the time would

* If the reader has any doubt on this subject, he may satisfy himself by consulting the history of those times; and he will find instances enough in Hale's history of the Pleas of the Crown; where he treats of treason.

not now be received in our courts of justice ; and least of all would be precedents of parliamentary attainders. If then the precedents of Parliament would be of no authority, or weight, where a single individual of the meanest rank stood upon his trial ; are they to be decisive, in a measure that involves the dignity, the welfare, perhaps the peace and security of a whole Empire ?

We may judge what the parliamentary precedents of those days are, since we find, in the reign of Edward II. and others subsequent, the King perpetually issuing his ordinances, and issuing them in vain, against the illegal practice, which prevailed universally among the great Barons, of coming to Parliament, attended by large bodies of armed men ;* and we find, in *Ryley*, a precedent of solemn treaty of peace, under the mediation of the Pope's legate, between King Edward II. and some of his rebellious subjects.

To illustrate the foregoing general observations, by a few brief references to the history of the time. In the reign of Edward II. from whence the first precedent is taken, the Barons having come to Parliament in defiance of the laws and the King's prohibition, with a numerous retinue of armed

* See several instances of these ordinances, in *Ryley's Placita Parliamentaria*. Pla. Par. 538.

followers ;

followers; that unhappy prince was obliged to sign a commission, empowering the Prelates and Barons to elect twelve persons, with authority (which was to continue irrevocable till Michaelmas next) to enact ordinances for the government of the kingdom, and regulation of the King's household, which should have all the force of laws and statutes.

We find the *Spencers* attainted, that attainder reversed, and again renewed by the Parliament of that time; we find those noblemen condemned to an ignominious death by the rebellious Barons, without even the form of a legal trial; we find that Parliament proceeded to try and depose their sovereign, and renounced their allegiance to him by a solemn deputation; we find the King in the power of his rebellious subjects, compelled by Durefs, to sign a resignation of the crown, and afterwards cruelly murdered by his own servants at the instigation of his nearest connexions. What weight or credit is given to the precedent of Parliament appointing a council of Regency to assist the young King? is it of more validity, than that by which *Mortimer* was condemned unheard, and which was afterwards reversed as illegal by a subsequent Parliament? The precedents of those times would prove too much, we cannot pick and chuse from among them, they must either

be received in *toto*, or all together reprobated.

Should we resort to the reign of Richard II. we shall find a precedent to shew that the House of Lords alone possess the exclusive power of appointing persons to exercise the executive power, in case of infancy or incapacity of the King. The Commons apply by petition, (which is remarkable) to the Lords, and request them to appoint a Council to manage public business; and the Lords do accordingly of their own mere authority appoint, not indeed a Regency, but a Council of nine. But what Principles can be collected from the transactions of a reign that sets all principles legal or constitutional at defiance? A Council of fourteen was appointed by the factious Barons, the commission to those persons, ratified by Parliament, all the power executive and legislative transferred to them for a year, and the King himself by violence compelled to sign this commission, and swear to the observance of it. Five great lords accused or (as it was then called) appealed the King's Ministers before Parliament, and Parliament, who ought to have been the judges, bound all their members, by an oath, to live and die, with the lords appellants, and defend them with their lives and fortunes. We find Parliament condemning numbers of their own body, without trial or examination,

on, to gratify the turbulent *Gloucester* and his faction; we find them condemning one of their own members to die as *a traitor*, to gratify the King, and this for no greater offence, than using the privilege of Parliament, and complaining in a debate among themselves, that the King's court was croud-
 ed with *Bishops and Ladies*.^{*} In this reign the *Judges* of the land declared it as the law,
 " That the King hath the governance, and
 " may appoint what shall be first handled,
 " and so gradually what next in all matters
 " to be treated of in Parliament, even to
 " the end of the Parliament: and if any
 " person shall act contrary to the King's
 " pleasure made known herein, they are to
 " be punished as traitors." And that the
 Lords and Commons cannot, without the
 will of the King, impeach in Parliament,
 any of his judges or officers, for any of their
 offences; and if any one should so do, he
 is to be punished as a traitor. At the next
 Parliament (says Foster) a censure sufficiently
 severe and not warranted by any known rule
 of law did pass upon them, their own mea-
 sure was meted out to them; but in the 21st
 of the King these questions with the judges
 answers, having been read in full Parlia-
 ment, it was demanded of all the estates

* One Haxey who proposed some Petitions on the state
 of the nation.

of Parliament, how they thought of the answers aforefaid; and they faid, "*they thought the faid justices made and gave their answers, as good and lawful liege people of the King ought to do.*" "A Parliament (fays Foster)* that could folemnly adopt principles, fo contrary to the whole tenor of the ftatute of treafons, anti-constitutional in every point of view, fubverfive of the undoubted rights of Parliament, and of all freedom of debate in either Houfe, fuch a Parliament muft, unlefs under actual force, be the willing tools of defpotic power, and in either cafe its opinion deferves no manner of regard." This Parliament annulled, for ever, the commiffion which had been ratified by a former Parliament, and declared it treafonable to attempt, in future, to revive a fimilar commiffion; abrogated the acts that attainted the King's minifters, declared the general pardon granted by the King invalidas, extorted by force, and attainted the Barons who had oppofed the King, and reverfed the attainder of *Trefilian* and the other judges: but, what is very remarkable, this Parliament elected twelve Lords and fix Commons to finifh all bufinefs which had been laid before *Parliament* and not concluded, a proceeding which alone fhould be decifive to fhew what cre-

* Foster's C. L. 396.

dit is due to the parliamentary precedents of this time.*

Come we now to the precedent of the accession of Henry IV: a precedent annulled by the act of Edward IV. revived by the 1st of Henry VII. and which was more relied on than it deserved in the debates of the convention in 1688. The Duke of *Lancaster* called a Parliament in the King's name, he extorted a resignation of the crown from *Richard*, but unwilling to trust to that, he determined to have him solemnly deposed in Parliament; he drew up a charge of thirty-three articles against him, and presented it, to that body; it was not canvassed, nor examined, nor disputed, in either House, but seemed to be received with universal approbation. One man alone, the Bishop of *Carlisle*, had the courage to appear in defence of his unhappy master; and he was seized and imprisoned, by order of the Duke of Lancaster, for only delivering his sentiments in his place. Thus, we find Parliament claiming mighty powers, yet wanting every thing necessary to them, even common freedom of debate. Thirty-three long articles of charge were at one meeting voted unanimously against *Richard* by the same Peers and

* In the reign of Edward III. there is a strange transaction; the trial of Sir Thomas Berkley in Parliament by a petty jury. Foster's C. L. 387.

Prelates,

Prelates, who, but a little before, had voluntarily and unanimously authorised those very acts of violence, of which they now complained; and the throne being vacant by the deposition of *Richard*, *Henry* claimed it in the name of Father, Son, and Holy Ghost, by the jumbled and inexplicable title of Conquest and Decent conjointly. He did not resort to Parliament, as having the power of appointing, but only of recognizing the Sovereign; he became King, nobody could tell why or how, (except by force) and the title of the House of *March*, which had formerly been recognized by Parliament, was neither invalidated nor repealed, but past over in total silence.*

But supposing the precedents of the deposition of *Edward II.* and *Richard II.* were constitutional and legal; they proceeded, on a principle, which surely does not apply to the case before us; on the principle of self-defence, and a violation of the original compact. Both these unhappy Princes were superseded for incapacity and malversation; the principle was right, though the particular applications of it might be villainous. If the charges were well founded, the constitution was subverted, the power had returned to the people; and they were entitled to interfere by the same right of self-defence,

* See Hume's Hist. England.

which

which nature gives, to nations as well as individuals, in cases of necessity.

Parliament, it is true, on the accession of Henry the 6th, which is the next precedent, took upon themselves to set aside the designation of his father, who had by will, (which shews that these exclusive claims of Parliament were not then recognized) appointed the Duke of *Bedford* Regent of France, the Duke of *Gloucester* Regent of *England*, and committed the custody of the King's person to the Earl of *Warwick*; Parliament declined the name of Regent altogether, and appointed the Duke of *Bedford* Protector or Guardian of the kingdom, a title which they supposed to imply less authority; they invested the Duke of *Gloucester* with the same dignity, during the absence of his eldest brother; in order to limit the power of both these Princes, they appointed a Council of Regency; and committed the custody of the infant King's person to his great uncle *Beaufort*, Bishop of Winchester, who, as his family could never have any pretensions to the crown, might safely, they thought, be entrusted with that important charge. This precedent, if it proves any thing, proves too much; but it proves nothing; it past *sub silentio* through the moderation of the King's uncles, who acquiesced in what they probably did not approve. They were alone aggrieved, alone compe-

tent to call in question, what had been done ; they knew the title of their nephew was disputed, they saw the country involved in the greatest war in which she ever had been engaged ; and submitted, from prudential motives, to what they knew at the time to be a usurpation, but knew also to be dictated by zeal for the King's person and government.

We come now to the other precedent of this reign, on which Mr. *Pitt*, and the advocates for his resolutions, have so strongly relied ; although they, and every body who looks into the history of that period, must be sensible, that this very Parliament, would instead of appointing York protector with limited powers, have placed the crown at once on his head, had he been disposed to take such a decided step. It is not in the principles of the constitution, as they were understood and laid down at that time ; in the powers of Parliament as they were then defined ; or in the Duke of *York's* supposed deference to them ; that we are to look for a key to the precedent before us ; but in the peculiar character of *Richard*, and the nice and peculiar circumstances in which he stood. *York* was as much deficient in political, as he excelled in personal courage : though the crown was perpetually within his grasp, he feared to seize, what he wished to possess. The House of *York* had the best title, but

Henry

Henry the 6th had been in possession of the crown almost forty years by lineal descent, and under a parliamentary settlement, in which the whole nation had acquiesced, and his title was supported by a numerous and powerful party. These considerations intimidated *Richard*, and threw an appearance of inconsistency over the resolves of those Parliaments, which were at his devotion. *York* demands redress of grievances at the Head of 10,000 men; he disbands his army and flies, he returns, and the King being seized with an indisposition, the Queen and Council are obliged to appoint him Lieutenant of the kingdom with power to summon a Parliament; and that Parliament appointed him Protector during pleasure. Here is a precedent of the Queen and Council of themselves disposing of the supreme executive power, during the indisposition of the King. Whether the name is Regent or Lieutenant the thing is the same.

But it is said Parliament imposed restrictions on *York*, and therefore, here is a precedent of the power of Parliament. No, we must look for these restrictions in the excessive caution of *York*, not in the power of Parliament; he himself, not Parliament imposed them; a Parliament which entrusted the royal authority to a man, who had appeared in arms against his Sovereign, and had such strong adverse pretensions to the

crown, could not be averse from his taking possession of it. Immediately after this boasted precedent, we find the House of Peers alone assuming to themselves the same powers, and actually exercising the same functions, which, it is contended, the preceding transaction gives to the *two Estates of Parliament*. The House of Lords alone annul the former appointment, and declare the King to be reinstated in his authority. Can we find the seeds of the constitution? Can we discover any rule of legal conduct in such precedents as these? No, we find only the rude vicissitudes of faction, and the blind submission of Parliament, that common engine of violence and wrong, to the prevailing party.

After gaining the battle of *Northampton*, and when the crown was within his grasp, *York*, instead of putting it on his head at once, laid his title before the House of Peers; appealed to them as judges, and demanded the Sovereign authority as his right from their judicial determination. The Peers take, as their assessors, some of the Commons; and with that usual regard to law and common sense, which marks the precedents of those times, recognize the title of *Richard*; but decree, that, as *Henry* had so long usurped the name of King, he should retain it during his life, while *York* should possess the whole exercise of the executive power; that

that the latter should be acknowledged heir to the crown; that every one should swear to maintain his succession; and that it should be treason to attempt his life.

The accession of *Edward* the 4th to the crown is an instance of a military election. The army was assembled, the croud being asked whether they would have *Henry* for King rejected him, the young Duke of *York* being then proposed to them, was received with loud acclamations; a number of Lords, Bishops, and Magistrates were next assembled, at Baynard's Castle; they ratified the popular election; and so *Edward* became King. The first Parliament called by him, declared all the Parliaments held under the House of *Lancaster* illegal; and attainted King *Henry* the 6th, his Queen, and their adherents. About ten years after, that Pageant of a King *Henry* the 6th was restored; all the Acts made in the Parliaments of *Edward* the 4th were repealed; the Duke of *York* was declared an usurper; he and his adherents attainted; and the attainders of the *Lancaster* party reversed. But, a few months after, *Edward* prevailed over his enemies; and a Parliament was summoned, which ratified, as usual, all the acts of the victor, and recognized his authority.*

* Martial law was introduced at this time, and many of the nobility executed under it. The Constable of England was authorized by his Commission, to proceed summarie, and de plano, sine respectu and figura justitie sola facti veritate conspecta.

A precedent was quoted, in debate, by Lord *Camden*, and with some appearance of triumph; but surely it need only be stated, to shew, that it does not apply to the present case. It was a determination of the *Lords Spiritual and Temporal* on a *Point of Law*; not an interference of the *two Houses* to appoint a *Regent*; and they decided the point of law properly. The point was this, the Duke of *Gloucester*, uncle to Henry the 6th, claimed, a right to be *Regent*, during the minority of his nephew, and in the absence of the Duke of *Bedford* his elder brother, who was nearer to the Throne; and they declare, that such desire was not caused nor grounded in precedent, nor in the law of the land. But is this an authority, to shew that the *Heir Apparent to the crown being of full age and ability, to govern, and present on the spot, has no more right to be appointed Regent than any other subject*. Precedents to shew, that the *presumptive* heir, has no right to the *Regency*, do not apply to the case of an *Heir Apparent*. Though Lord *Camden* will not suffer himself to suppose any difference between them, the law of *England* makes a wide one. The *Heir Apparent* who carries on the lineal succession, is more dignified, more highly favoured, in consideration of law. For proof of this, I shall only refer you to the Statute of Treason, [25 Edw. III.] which guards his person, with the

the same ease, as that of the King; and is equally solicitous to preserve the purity of his marriage-bed; a solicitude which is not extended to the heir presumptive.

The conventions which restored Charles the Second, and effected the glorious Revolution of 1688, do not furnish any precedent to justify the claim of the Lords and Commons to appoint a Regent. The power of those assemblies stood on the peculiar circumstances of the time, their interference was warranted by strong necessity. We cannot reason from that interference, unless we are able to shew that a like necessity exists at this day.

The true principles of those two great events are put in so clear a light by an admirable man and sincere friend of the constitution, *Sir Joseph Jekyl*, who was one of the managers for the Commons at *Sackevertell's* trial, that I shall transcribe some of his words.—“ It is far from the intent of
 “ the Commons to state the limits and
 “ bounds of the subject's submission to the
 “ sovereign; that which the law hath been
 “ wisely silent in, the Commons desire to be
 “ silent in too; nor will they put any case
 “ of a justifiable resistance but that of the
 “ Revolution only.” And again, “ To make
 “ out the justice of the Revolution, it may
 “ be laid down, that as the law is the only
 “ measure of the Prince's authority and the
 “ people's

“ people’s subjection, so the law derives its
 “ being and efficacy from common consent;
 “ and to place it on any other foundation,
 “ is to take away the obligation: this notion
 “ of common consent imposes on both prince
 “ and people, to observe the laws.”—“ No-
 “ thing is plainer, than that the people have
 “ a right to the laws and the constitution;
 “ this right the nation hath asserted, and
 “ recovered out of the hands of them who
 “ had dispossessed them of it, at several
 “ times. There are of this two famous in-
 “ stances, I mean the *Restoration*, and the
 “ *Revolution*; in both these great events,
 “ were the regal power and the rights of the
 “ people recovered.”—“ That the constitu-
 “ tion was wholly lost, and recovered, at the
 “ Restoration, is known to all. And be-
 “ fore the Revolution, it is known how
 “ Popery and arbitrary power had invaded
 “ the constitution. The royal supremacy, of
 “ such absolute necessity to preserve the peace
 “ of the kingdom, was disclaimed; the pa-
 “ pal supremacy, by a solemn embassy to
 “ Rome, acknowledged. At that time the
 “ popular rights in almost all the species
 “ were invaded; that great privilege of the
 “ people, on which all others depend, that
 “ of giving their consent to the making
 “ new or repealing old laws was invaded;
 “ and a dispensing power, which rendered
 “ all our laws precarious, and at the will of
 “ the

“ the Prince, exercised. These and a great
 “ many other acts of absolute power, are
 “ mentioned in that act of Parliament called
 “ the *Bill of Rights*.”—“ And as the nation
 “ joined, in their judgment of their disease,
 “ so they did in the remedy. They saw
 “ there was no remedy left but the last, and
 “ when that remedy took place, the whole
 “ frame of the government was restored en-
 “ tire and unhurt.” †

The Parliament which restored Charles, being summoned without the King's consent, received at first only the title of *Convention*. And it was not, till the King passed an act for that purpose, that they were called by the appellation of *Parliament*.

What was done by the Convention of 1688, if duly considered, will be found a precedent, that instead of supporting the claims of the Convention of 1788, militates against them. The Peers and Bishops had addressed the *Prince of Orange*, desiring him to summon a *Convention*, by circular letters; and to assume in the mean time the management of public affairs. All the members, who had sat in the House of Commons during any Parliament of Charles the Second, (the only Parliaments whose election was regarded as free) were invited to meet; and to them were added the mayor, and fifty of

† State Trials, V. 5. p. 667, 668.

the common council. This (says Hume †) was regarded as the most proper representative of the people, which could be summoned during the present emergence. They unanimously voted the same address, with the Lords; and the Prince, being thus supported by all the legal authority, which could possibly be obtained in this critical juncture, wrote circular letters to the counties and corporations of *England*; and his orders were universally complied with.—A *Convention* summoned in this extraordinary way, and returned by the people, in full contemplation of the great Revolution then depending, and with full powers, and for the express purpose, of settling the government, cannot surely be compared, with the House of Commons returned under the King's writ, and meeting, at a certain day, under the King's prorogation; any more, than a temporary indisposition of the chief magistrate, can be compared with a total subversion of law and constitution. Amidst all the violence of party, amidst the wildness of speculation, which might have been enexcusable at such an extraordinary crisis, the *Convention* never dreamed of such claims, as have been advanced on a late occasion. Amidst a convulsion, which shook the state to its base, they, with a pious hand, collected and preserved the seeds of

† Hist of Eng. V. 8. p. 245.

the constitution, from amongst the ruins.— Even the most zealous *Whigs* deprecated the idea of making the Crown elective. They grounded themselves entirely on necessity; they considered the case of the Revolution as single and isolated. They resolve, “ That
 “ the King, by having endeavoured to sub-
 “ vert the constitution; by violating the ori-
 “ ginal compact, between the King and Peo-
 “ ple; and having violated the fundamen-
 “ tal laws, and withdrawn himself from the
 “ kingdom, had abdicated the government.” They state all their grievances, and the enormities of King *James*, as their justification; and conclude, “ Having therefore an entire
 “ confidence that the *Prince of Orange* will
 “ perfect the deliverance so far advanced by
 “ him, and will still preserve them from the
 “ violation of their rights, which they have
 “ here asserted, and from all other attempts
 “ upon their religion, rights, and liberties.” They resolve, “ that the *Prince and Princess*
 “ of *Orange* be, and be declared King and
 “ Queen, &c. and pray them to accept the
 “ Crown.”—In the act for declaring the rights and liberties of the subject [2d. Sess. 1st W. & M.] notice is taken, that the late King *James* did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of the kingdom; and the particular instances are set forth. It then declares, that that unhappy Prince had abdi-
 F 2 cated

cated the government; and “that it pleased
 “Almighty God, to make the *Prince of Orange*
 “the glorious instrument, of delivering the
 “kingdom from popery and arbitrary power.”

By another act a particular form of prayer is
 appointed, to thank God for this deliverance;
 and an act for preventing vexatious suits
 against such as acted in order to the bring-
 ing in their Majesties, or for their service,
 [1st W. & M. 2d Sess.] takes notice, “that
 “at the time of his Majesty’s glorious enter-
 “prize for delivering this kingdom from
 “Popery and arbitrary power, divers Lords
 “and Gentlemen, &c. did act as lieutenants,
 “&c. tho’ not sufficiently authoris’d there-
 “unto; and did apprehend and put in cus-
 “tody divers criminous and suspected per-
 “sons; and did seize and use divers horses,
 “arms, and other things; and enter the
 “houses and possessions of several persons,
 “and did quarter and cause to be quartered
 “soldiers and others there; which proceed-
 “ings *in times of peace and common safety would*
 “*not have been warrantable;*”—yet that act
 declares, “they were necessary, in regard
 “of the exigence of public affairs, and ought
 “to be justified.”

The proclamation which issued on the ac-
 ceptance of the crown by *William and Mary*,
 is so remarkable, that I cannot pass it over
 in silence. “Whereas it hath pleased Al-
 “mighty God, in his great mercy to this
 “king-

“ kingdom, to vouchsafe us *miraculous deli-*
 “ *verance* from Popery and arbitrary power;
 “ and that our preservation is due, next un-
 “ der God, to the resolution and conduct of
 “ his Highness the Prince of *Orange*, whom
 “ God hath chosen to be the glorious instru-
 “ ment, of such inestimable happiness, to
 “ us and our posterity, &c. We therefore,
 “ the Lords spiritual and temporal, and
 “ Commons, *together with the Lord Mayor*
 “ *and Citizens of London, and others of the*
 “ *Commons of this realm, do with a full*
 “ consent publish and declare, &c. &c.”

From these quotations two inferences do
 most plainly follow: first, that the Conven-
 tion of 1688 grounded their authority, and
 justified their interference, not on any usual
 powers incident to *Parliament*, in the com-
 mon course of the constitution; but, as I
 have already said, and cannot too often
 repeat, on the peculiar necessity of the Crisis,
 on the violation of the original compact be-
 tween the King and the people. Second,
 that the Convention did not claim their
 rights of interfering, to fill the vacant
 throne, as being the two *estates of Parliament*,
 merely, but, as being the best form of a *National Convention*, which the shortness of the
 time would allow, or could be got together,
 on the spur of the occasion; and this I think,
 is manifest from their wording of the pro-
 clamations, and joining with themselves the

Lord

Lord Mayor, and Citizens of London, and others of the Commons of England. I hope I shall be excused, for dwelling so long on this subject, considering how much the principles of the *Revolution* have been distorted, and the precedent misapplied.

Under the usual forms, in the ordinary course of the constitution, the two Houses of Parliament have no right to dispose of the executive power; neither abstract legal reasoning, nor antient precedent supports the claim. An extraordinary interference, then, can only be justified by necessity, which resolves government to its elements, and turns back the stream of power to the people. A necessity paramount the constitution can never be alleged, while the constitution remains. Is the constitution destroyed, the execution of the laws suspended, the established religion endangered by the indisposition of his Majesty?—But supposing that such a necessity did exist, and that, by any means, the throne were vacant; not the two Houses of *Parliament*, but a National Convention alone will satisfy the spirits of the maxim, which derives all power from the people.

But I will suppose it possible, that a necessity might authorise the interference of the legislative body, without dissolving the constitution. That necessity must be either the impossibility of providing for the emergency, by any other mode; or the mischief attending

attending the proposed alternative. Where an option remains no necessity can properly be said to exist. If we can provide for the emergence of the King's disability, under the forms of the constitution; it is not free and open for us to resort to the plea of necessity, for an unconstitutional interference of the legislative body. All violent and extraordinary modes of proceeding should, like *drastic* medicines, be reserved for an extremity; for they always exhaust and weaken the constitution, cause agonizing convulsions, and often death.

How then has the constitution provided for the melancholy event before us? I say by an obvious analogy between this disability, which is a temporary political death, and the actual demise of the Sovereign: and as his Heir Apparent succeeds of course on his actual demise, and is King before coronation, the next moment after the death of his ancestor, because by *the law of England there is no interregnum, and coronation is but an ornament or solemnity of honour*;^{*} so by a parity of state reason, and constitutional principle, in order to avoid the anarchy and discord that are to be apprehended, when there is a competition for the supreme power, the weakness and party rage incident to an effective Government; the Heir Apparent

^{*} Coke 3d. inst. Ch. i. p. 7. Hale, P. C. vol. i. p. 101.
ought

ought to succeed to the functions of the Sovereign; should the exercise of the supreme power be suspended, by sickness. Is there in this any thing difficult, absurd, or repugnant to any one principle of law or constitution? The doctrine of lineal hereditary succession implies it; the British constitution requires it; for it abhors any chasm or cessation of the executive power, any interposition of extraneous authority. The maxim, that *the King never dies*, means that none of those casualties, which are incident to human nature, suspend for a moment the functions of the chief magistrate; but that they are instantly supplied by the next in right of succession, and the spirit of the maxim applies to a *political* as well as *actual* demise.

Mr. Pitt, while he in terms asserts, *that any other subject has an equal right to the Regency, with the Prince of Wales*; does in fact admit, that he, and he alone, as Heir Apparent, has an exclusive and indefeasible right to the exercise of the executive power; for he does admit him to be the most proper person to be appointed *Regent*.—But how most proper?—not, certainly from his character and talents; else, why the base and unworthy jealousy? why the libellous and unconstitutional restrictions.—It must be then something resulting from his station and place; something incident to his birth. It must be his quality of Heir Apparent, giving him
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an original, inherent right, which the two Houses of Parliament may *recognize*, but can neither *give or take away*. Here we confess the sacred voice of truth, forcing its way, through all the simulation and deceit, of interest and ambition; amidst the wild absurdities of faction, this confession is extorted *that the Prince of Wales is the most proper person to be Regent*; Words which uttered by those who grieve to see, and have done their utmost to defeat his title, can only mean, that he has an *exclusive right to be Regent*.

But we are told *Nemo est Heres viventis*, a technical rule resulting from the feudal origin of our laws, and superseded frequently even in the disposition of private property, by the liberality of modern determinations. This maxim cannot be applied on this occasion, without confounding the person, with the political character.

The King of England has an heir during his life. The law recognizes him, the statute of treasons (25 E. III) holds him forth to view as the object of peculiar veneration, marked out by the Constitution, distinguished from other subjects by peculiar privileges; his existence is considered as inseparably connected with the welfare of the State, and the compassing his death is made equally criminal, with the compassing that of the King: and why? because, though not actually invested with the executive power,

he is conceived to stand so immediately near it, that the moment the King is removed, it rests on him without pause or chasm. He accompanies the King in the orb of his ministry; an inferior luminary indeed, but inseparably connected, and forming a part of the system, shining with a portion of the light of Majesty; associated in the gratitude and adoration of those who are warmed and cheered by its influence: and the moment the great luminary declines succeeding to his station and dispensing his light.

But perhaps such mischiefs would result from this doctrine, were it followed up in practice, that it becomes necessary for the legislative body by, an extraordinary interference, to dispose of the executive power. What are the apprehended mischiefs? They can only relate to the rights and prerogatives of the Sovereign, to the power and principles of Parliament, or to the rights of the people. Of the former, I shall speak, when I come to consider the proposed limitations. As to the latter, it might be urged, with equal reason, that the two estates of Parliament ought to interfere on the actual demise of the King, to hold the royal functions suspended, to scrutinize the claim of his successor, circumscribe his authority, and fetter him with conditions. Even supposing the *Heir Apparent* were immediately to assume the exercise of the executive power,
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on the disability of the Sovereign, *that*, would no more trench on any of the constitutional rights and powers in the State, than his immediate succession in case of an actual demise. The power of a Regency is naturally feeble; there is little danger therefore, to fear encroachments on the Constitution, from its administration of the executive power. Should any such thing be attempted, the legislative body have the same remedy against a *Regent*, that they have against the *King* himself. The remedy is not by confounding the *legislative*, with the *executive*; nor by appointing or controuling the chief magistrate of the State; but, by precluding or correcting the abuse of his authority, in the mode which the Constitution has pointed out; by the power of impeaching his servants and advisers; and by withholding the supplies. Those, who would seek for any other security of our rights, seek what is unknown to the *British Constitution*, and overthrow what they would seem most zealous to maintain.

Nothing which has been here advanced, militates with the Statute of Anne 6. c. 7, or insinuates a doubt of the power of the *whole legislature* co-jointly, to limit and alter succession. I look on the line of hereditary succession, not as a thing unchangeable and indefeasible, but as a great rule of political convenience, founded in consummate wisdom,

dom, and sanctified by uniform practice with a few deviations, which rather strengthen the rule. I would hold it sacred, I would not allow myself to suppose in speculation the possibility of breaking through it, inasmuch as any departure from it, is so dangerous, and can only be justified by some invincible necessity; no less, indeed, than the preservation, or perdition of our present happy Constitution.

Enough has already been said on this particular point, to satisfy any man of common sense. But the form of the Constitution has been so disguised; such false and pernicious doctrines have gone abroad, such groundless clamours have been raised, the public mind so poisoned by illegal notions, diligently instilled by a desperate and dishonest faction, and greedily swallowed by a deluded populace; that one cannot be too solicitous, to rescue and vindicate the truth, and place the right of the Heir Apparent on its true Constitutional base.

There is a point of view, in which, if we consider this subject, the right of the Heir Apparent to the personal exercise of the executive power, on the disability by indisposition of the reigning Sovereign, must appear unquestionable. The supreme executive power can never be annihilated, or suspended; it is co-existent with the laws of nature, and the rights of man; with the principles

principles of self-preservation, and the exercise of free will. The people cannot cease to desire their own good ; and forms of government are but modes of pursuing the common good agreed on by the people. The executive power must then be somewhere, it is the inherent endeavour of the community at self-preservation. It must be either in the King—in his regal line—in the legislative body—or in the body of the people at large. It is not in the King, *that* is acknowledged.—It cannot be in the *legislative* body, the law and Constitution of England forbids, while it precludes an union of the executive and legislative power. Is it then, in the body of the people at large ? There is an unerring test, by which it may be known and ascertained, whether the power has reverted to its original source—the people ; the people, who are paramount the forms of the Constitution, might direct it into other channels, alter its form and designation, in other words, new-model the Constitution. But will any one maintain the enormous position, that in case of a temporary indisposition of the Sovereign, it is free for, or competent to the people, to alter the Constitution ? The power, then, is not in the King—it is not in the legislative body—it is not in the people. Where shall we look for it ? The settlement of the crown, which gave the executive power to the
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the first King of the reigning family, his heirs, and successors, will tell us;—in them it must remain, until some event shall happen, such as an extinction, (which God forbid) of the whole illustrious line, and all that are entitled after them, in order of succession, or what is equally improbable, a violation of the original compact; to revert the power in the people.

If then, the personal exercise of the executive power, is prevented in the King himself, by any cause; if it cannot be interrupted for a moment; if it is an essential element of government, and like the elements of nature, may be altered and transferred, but cannot be destroyed; if it cannot rest in the *legislative*; if it is manifest, that it has not reverted to the people, it follows, by an inevitable consequence, that it must reside in the *Heir of the Crown, and in him alone*. This seems to be a very plain, and uncontrovertible truth, yet on the denial of it, plain as it is, Mr. *Pitt*, such is the force of popular delusion, builds a name as champion of the Constitution.

I come now, to Mr. *Pitt's* 3d. resolution, and waving all critical observations, on the loose ambiguous manner in which, this, as well as the preceding one, is worded; I must observe, that this resolution is not supported by the 2d; for though it might (which I deny) be conceded, that it is the *right and duty* of
of

of the *Lords* and *Commons*, to provide for the deficiencies of the executive power; it does not follow, that the mode here alluded to, is legal or constitutional.

And first, I deny, that in order to preserve the King's authority entire, it is *necessary* for the two estates of Parliament, to interfere. Next I affirm, that such an interference, as is proposed, so far from preserving, would subvert the King's authority.

The King's authority, in the *legal*, and that should be the only *parliamentary* sense of the words, means not the authority of the *individual*, but of the crown; not of *Caius* or *Lucius*, but of the chief magistrate. The law of *England* knows not the King, his people know him not, as an *individual* acting for his private emolument; they know him, as, at once the *father* and the *creature* of his people, acting only for the public good. Every attempt, to consider the *man*, as contra distinguished from the *King*, is treason against the Constitution; and can only be urged, at this time of day, by those who would invade the necessary constitutional prerogatives, and inherent functions and powers of the crown; under the thin pretence of securing the possession of them to his majesty. To preserve entire the authority of the King; the two Houses of Parliament are to take it entirely to themselves; the influence of the crown is to be turned against itself;

itself; and a minister's gratitude to his master, shown in outrage to his family.

"It is necessary (says this resolution) that
 "the Lords and Commons should determine, on the means whereby the royal
 "assent may be given to bills, respecting
 "the exercise of the powers and authorities
 "of the crown, in the name, and on the
 "behalf of the King, during his Majesty's
 "indisposition." Is not this an exercise of
 both legislative and executive power at once,
 by two estates of Parliament, under cover
 of the most wretched fiction that ever insulted
 the understandings of the people. The Lords and
 Commons determine on certain acts; and to give
 these acts the form of law, without the substance,
 the sanction of the third estate; they set up an
 airy phantom, a Pageant created by themselves,
 to personate the King; they agree that it shall
 be called the third estate, and give the royal
 assent, in a manner dictated by themselves, to
 acts framed by themselves. A rare device,
 which followed up to its principle would lead
 to the establishment of a tyranny in *England*;
 while, by a political legerdemain, by the factious
 use of two or three figures in masquerade, a
Convention transfers to itself, all the authority
 of the Sovereign.

The shadow which is set up, to personate
 the King, and give the royal assent to acts
 or ordinances of the two Houses of Parliament,

ment, is irreconcilable with the letter, and the spirit of the law, it will virtually repeal this declaratory act of Charles II. † It wants the constitutional controul, the negative, in which the safety of the executive power consists. The circumstance, and the only circumstance, for which the concurrence of the King is required, to give validity to acts of Parliament, is free-will, the power of pronouncing those emphatic words, *LE ROI S'AVISERA*. If the King himself were always obliged to assent to the acts of the two Houses, his appearance in Parliament would be a very silly pageant; his concurrence in acts of legislation, a very idle ceremony.

The object, too, for which the fiction is adopted, is such, as renders the precedent truly formidable.—It is for the professed purpose, of passing bills respecting the power and authority of the crown. “The legislative (says Blackstone) cannot abridge the executive of any rights which it now has by law, without its own consent. Since the law must perpetually stand as it now does unless all the powers will agree to alter it.”* By means of the fiction before

† That statute did not introduce any new law; it did not declare any new principle; it only solemnly recognized an old maxim of law and constitution. It was enacted then, as a sort of *amendi honorable* of Parliament for its transgression; a memorial of their repentance of a frantic usurpation.

* Comm. v. i.

us, the two Houses of Parliament, not only legislate, without the concurrence of the executive power; but the very executive power itself is to be the subject of their legislation; the victim rather of their usurpation; while they arrogate to themselves a right of declaring and defining the extent, and prescribing the exercise of the powers and authorities of the Crown. The words of this resolution are broad and general indeed.— Under it, the two Houses of *Parliament* may new-model the constitution; abridge or restrain the powers of the Crown; or transfer them wholly to themselves. All these acts may come under the description of bills respecting the power and authority of the Crown.

Lord Coke has been quoted * as an authority in this case; where, in 4th Inst. he lays it down, that the King may be represented by commission under the great seal of *England*, to certain Lords of Parliament, he being within the realm, by reason of SOME INFIRMITY. But this must be understood of some infirmity, which leaves the King the use of his faculties, the power of volition; not a professed disability. Shall a decided incapacity to govern be established by proofs; and yet, shall he be supposed to do an act which necessarily implies in him a full capacity?—

* See 4 Inst. 6. and the precedents there quoted from the Parliament-roll. 24 Edw. III. 25 Edw. III. 3. Edw. IV. and like patent to E. of Warwick, same Parliament.— So 28 Eliz.

How gross an absurdity ! The King's sign manual is requisite, as an authority for making out such a commission ; and in all the precedents, the particular causes that occur to prevent the King's attendance, are stated ; the King, speaking in his proper person, recites them. Conformably then to all the precedents, the King must speak in his own person, he must recite the cause of his absence—shall he mistake the fact ? That would be error and invalidate the instrument. Shall he state his own disability ? His own derangement of mind inducing an incapacity ? *That*, no man is competent to do, says the law of the land. His Majesty's infirmity has been compared to the case of infancy ; what is the precedent from the reign of Henry VI. ? An act of indemnity was thought necessary for the safety of those who advised the putting of the great seal into the hands of an infant King. Tho' the act was the appointment of a Regent, a necessary measure.

But these commissioners will differ widely, from any that we find, in any precedent. The commissioners, in all the precedents, are to speak the sense of the King to his Parliament ; the commissioners here, are to *echo* back to a parliamentary *convention their own sense*. But what authority have the commissioners under such a commission ? Surely a delegated one ; Can the stream rise above its source ? Can the delegated authority rise

above its original? Can the King communicate a power which he himself does not possess? But the King himself has no power; it is confessed he has not. The want of it is the very foundation of the interference of the Lords and Commons. Does the affixing of the great seal to their commission convey to them any additional authority? by no means. The affixing of the great seal is not the appointment; the appointment must be by the King. The great seal is only affixed, in evidence of that appointment, and the authority for affixing it is the King's signature. So that, either the King must be competent to act, and then the commission is unnecessary; or incompetent, and then the commission is illegal and invalid.

But the authority of Parliament will give to this instrument that validity, which it ought to derive from the appointment of the King. Observe here, I beseech you, how the *convention* of Parliament not only reasons, but acts, in a circle, and ends where it began. It acts, to legislate, and legislates to act. It confesses itself incompetent to the work of legislation, because of the deficiency of the executive power; and yet, the means which it adopts to supply that deficiency, are a very strong and marked act of legislation; an attempt to avoid the semblance, by usurping the reality. The empowering certain persons to do certain acts respecting

specting the community; the empowering certain persons to act in the name, and on behalf of the King, in matters vitally affecting his prerogative; the directing a certain use to be made of the great seal; surely, these are acts of *legislation* of the most decided kind; and the only use of proceeding in this circuitous and complicated manner, is to dazzle and perplex the vulgar, ever ready to admire what they do not understand; that they may not see the enormity of the precedent before them.

The Solicitor General of *England*, tells us, this is a subject perplexed with difficulties, and involved in labyrinths. It is only so, to those who delight in crooked ways, and bewilder themselves, in labyrinths of their own making. And what a clue does he offer us! *We are to be governed by the subtleties of metaphysical Lawyers.* We are to believe in a transubstantiation more extraordinary than any thing of Lord *Peter's* in the Tale of a Tub, and this faith is to save the soul of the constitution alive; but we have not so learned the constitution. The constitution is founded in the common sense, and common feelings of mankind—its great truths are simple and obvious, that he that runs may read. Its proceedings are conformable to its maxims; direct, dignified, and intelligible.

Mr.

The Solicitor General of England, with the narrow technical reading of his profession, has adverted to legal fictions. But where are those fictions admitted? In the practice of the courts; in the offices of clerks in those courts; in the transfer of private property; and the forms and titles of judicial proceedings. Legal fictions there are, but where will he find a precedent of a constitutional fiction. Legal fictions are sometimes admitted, not of necessity, but merely from a religious veneration for antient forms. Thus the King is at this day supposed to be personally present in the Court of King's Bench, which in antient times was actually the case. Sometimes they are adopted, to further justice; by amplifying the jurisdiction of courts, giving the party a more efficacious remedy, or the choice of tribunals; thus are persons supposed to be in the custody of the marshal, to give jurisdiction to the King's Bench; and such is the string of fictions, on which the modern proceedings in ejectment are founded; sometimes they are employed in conveyance; thus a *recovery*, under the form of an adverse suit, becomes one of the common assurances of the land; sometimes they are introduced for the sake of preserving uniformity of style in the public acts and records; thus, though the King may be an infant,

infant, the public acts, writs, letters patent, and commissions run in his name; and he is in that respect supposed competent to all the functions of his royal station; but this is to avoid the infinite perplexity, and confusion, which would be introduced into public transactions if their titles were to be perpetually varying. In fact, legal fictions exist only in the modes and accidents; they cannot be admitted in the substances; that is to say, they cannot alter the nature of things; though they may vary and regulate the manner of proceeding with respect to them. Legal fictions therefore cannot be legal titles. They cannot in themselves found a right or confer a property; though they may be instrumental, in the hands of the law, to defend or pursue that right; to recover or transfer that property. Legal fictions are the subservient creatures of the law, liable to be controuled, examined, suspended, or wholly superseded by it for the sake of substantial justice. For it is a maxim of the law that legal fictions cannot work a wrong. Fictions of law, therefore, can never be above the law, by which they are examinable; therefore they never can be the grounds of legislation; for then, they would be above the law. But by the mode of argument before us a legal fiction, would ascend from mere forms (its proper sphere) to substance. It would create a right, the most important, the right of legislation;

gillation ; it would repeal not only the law, but the Constitution of the land. It would annul one of the orders of the State, and transfer all the powers to another.

It is said letters patent, and public acts passed even in the reign of a baby King, bear his name, and appear throughout, as if they owed their existence solely to him. This only shows that the *British* law abhors the appearance of any chasm, in the supreme executive power ; and rather than suppose any such thing adopts a fiction. But in truth, as I already observed, this fiction is only in recitals and words, confined to a department merely official and clerical, and admitted only, for the sake of uniformity in style. It is no argument, to prove, that the baby King can be made to perform any kingly function, or exercise any act of himself, or that his royal powers and authorities may be transferred to the two Houses of Parliament by a fiction. The fiction is authorised, by the King's actual functions being performed by a Regent ; but a fiction cannot give the power of appointing one. And this is confirmed by the precedent from the reign of Henry VI. Strange ! that a fiction which was only admitted to preserve entire the royal functions and authority, should be used as an argument to subvert them.

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The fallacy arises from confounding the twofold existence of the King. He has a political existence, in which the law sees in him, no disability, no infirmity, no mortality; and a personal existence. It is to his political existence, that fictions in law apply. Thus it is said the King never dies, the King can do no wrong. The style of the court of King's Bench, is, *before us at Westminster; before us at Dublin*: for though he cannot be in two places at once; and it would be highly improper, and interrupt the due administration of justice, should the King be actually and personally in court, at the determination of any cause, particularly on the crown side; yet he is politically present by his judges. But there are certain exertions of the supreme executive power, which are personal; certain functions, in which the King must come forward, in his natural capacity; because he must deliberate; he must judge for himself, he must exercise free-will. Such is the giving the royal assent, or dissent, to acts of the two houses; the passing of commissions, letters patent, grants and pardons under the great seal. In all such cases, the King's concurrence must be signified by some corporeal act; and if the Sovereign, from whatever cause, is incompetent to such corporeal acts of Sovereignty; the personal exercise of the supreme executive power, must be performed

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by a substitute; but no fiction of law can make the King himself appoint that substitute, and supply the deficiency of his own free-will, by an actual exercise of it. No omnipotence of Parliament can make the people believe, at one and the same instant, the actual ability and disability of the Sovereign.

But it is said the mere affixing of the great seal to the commission, will give it the authority of a record, and legalize all subsequent proceedings. I must beg leave, to controvert this position. The authority given to instruments under the great seal, is from their coming in the ordinary course of the Constitution, according to certain established forms, and attended with the sanction of those, who are invested with legal official powers to issue them, and give them validity. It is not, because such, or such an instrument happens to have the great seal affixed to it, that it has the authority of a record. The great seal must be affixed, by those who have a legal right to the custody of it; it must be affixed according to legal forms, and the import of the instrument must be legal and constitutional. Before we admit, that the great seal affixed by the command of a *Convention* of Parliament, to a certain instrument appointing substitutes for the King, to meet the said Convention; and in his name, and on his behalf to assent to their acts, will have the authority

authority of a record, and legalize all subsequent proceedings ; we must establish, first the authority of the Lords and Commons, to direct such an application of the great seal, without the authority of the King's sign manual ; and next the legality of such an instrument.

According to the argument, in support of the proposed fiction, if any man, no matter how, becomes possessed of the great seal, and affixes it to any instrument, that instrument can no longer be questioned ; though it were a pardon to himself of the very offence of stealing it. Suppose *Blood*, instead of the crown, had taken the great seal, or that the thieves who robbed the present Lord Chancellor of *England*, had stolen the seal, and affixed it to the grant of some patent employment, or crown lands ; would the validity of such a grant be unquestionable ?

If the Lords and Commons have a right to direct the great seal, to be affixed to any instrument ; they must, of course, have a right to grant the custody of it ; the former would be nugatory without the latter ; for the person having the custody of it, might refuse to obey them, and if they have a right to appoint a Lord Keeper, or put the great in commission, by a parity of reasoning they must have a right to appoint all the other officers of State. A right inconsistent with the known prerogatives of the crown.

But suppose the great seal legally affixed; does that preclude all further examination, so as to sanctify, at once, what is illegal and erroneous? suppose it were possible, for a commission to pass the great seal empowering certain persons, to kill all the travellers, who should take a certain road; would that legalize all subsequent proceedings? Even when the King's patents have past the great seal, in the due course of law, and according to the forms of the Constitution; they may be examined and avoided; if any person is wronged by them; if the subject matter of them is illegal; if they are founded on any false recital, or misrepresentation of fact. For in such cases the law presumes that the King was deceived in his grant. The court of Chancery has jurisdiction, to hold plea of *scire facias*, for the repeal of letters patent, at the suit of a former patentee, when they are granted to several persons, for one and the same thing. But when they are against law, or founded on a false suggestion, the King may have a *Scire Facias* to repeal his own grant, by letters patent. * [See c. 18, H. VI. c. 1, 3. Ed. VI. c. 4, 13 Eliz. c. 6, Eng. stat.] And the Chancellor is supposed by some antiquarians, to derive his name from cancelling letters patent. Thus we see, that, on legal principles, the affixing

* Inst. 79, 81, 82, 87, 88.

of the great seal, leaves the matter just where it was. 'Tis a solemn evidence, of the King's concurrence in certain acts, but cannot supersede the necessity of referring to, and consulting the King, by becoming that concurrence itself.

I proceed now to consider the proposed restrictions, on the power of the Regent. The speculative doctrines contained in Mr. *Pitt's* propositions were brought forward, not as mere declarations of a naked right; but as the basis of a system, as a prelude to the proposed limitations. Unless it were first established that Parliament had a right to appoint a Regent it could not be maintained that they had a right to limit and prescribe his powers; so that the world will judge, with what fairness and candour Mr. *Pitt* asserted that the discussion of this necessary postulate of his own doctrine was rendered necessary, by supposed declarations of the Prince's friends; declarations which were afterwards positively disavowed.

If the claim of the right to appoint a Regent by a Parliamentary Convention, is alarming and dangerous to the Constitution; much more so is it, when enforced and extended, by the exercise of a controul over his actions. That indeed, will render the executive power no longer the colleague but the pupil or servant of Parliament; and quickly vest a complete tyranny in the *Lords* and *Commons*.

Commons. The Regent stands in the place of King, and represents his power; by the Constitution the two characters cannot be distinguished. Every argument, that would now bestow on a *Convention* the power, of imposing limitations on a Regent, may be applied, at a future day, to the case of the King himself. There might at some time or other, be more plausible arguments adduced, for such an interference in the case of a King, than any that could be applied to that of a Regent; for instance, the uncertainty of a King's health; the probability of a sudden relapse into some violent malady; such an event would be as possible and as fatal to the interests of the state, as any usurpation that could be apprehended from a Regent.

But this claim becomes yet more alarming when we consider the new and unprecedented language, the bold, and disrespectful insinuations, which when honestly interpreted, however, mean but this; that the Heir Apparent of the crown shall be insulted, shall be deprived of his Birth-right, shall see the prerogatives of the crown violated, its rights invaded, and the very security of his family on the throne assailed; unless he will surrender at discretion, and throw himself on the mercy of a faction. In addition to the injustice, I shall barely observe the impropriety of showing any want of confidence in

in the Prince, at the very moment, when all parties are agreed that he and he only ought, and should become the substitute for his royal Father; and surely the admirable conduct and temper of his Royal Highness on the present trying juncture, shew him worthy of the utmost confidence of the people.

A Regent during a temporary indisposition cannot be formidable; the probability of his Majesty's speedy recovery, which has been urged as an argument for limiting the power of the Regent, goes strongly to shew, that all limitation is wholly unnecessary. The shorter time the Regency is likely to continue, the less danger is to be apprehended from any abuse of his powers by the Regent. He will not have time to entrench and fortify himself in the possession of his authority. He will look forward to the day, when he shall return into the mass of the people; and will not be very anxious for the extension of a power which is so soon to terminate. Besides, there will be a division of interests; a number of people will look onward, to the expiration of his authority; to a course of things in their former channels. Should any innovation take place, the day is at hand when his ministers and advisers shall stand before the tribunal of Parliament. Should any thing not meet the approbation of the Sovereign, it may easily be rectified

rectified when he comes to reassume his power.

But the argument against intrusting the Prince with the power necessary for the due administration of government, because peradventure he may abuse them, scarcely deserves a serious answer. Such a mode of reasoning, if reasoning it can be called, would go to deprive us of whatever is most useful in nature, and estimable in society. The most nourishing aliments, the most wholesome beverages, may be converted to poison when taken in excess. Even the best and most perfect forms of government have been abused and made the engines of violence and wrong. The liberties of the people have degenerated into licentiousness. The purest systems of religion, the dispensations of Deity itself have been made the pretext of persecution and cruelty. Yet, shall we, for this, subvert civil order, abolish liberty, and blaspheme Heaven?

The authority of a Regent is too often feeble; his conduct is generally marked by caution and diffidence. He has not the same power of extending his influence, and attaching followers, as a King. His concessions are less flattering, his favours less ennobling, his resentments less awful. Such, in general, is the condition of a Regent.— Now when a strong administration is required, when the affairs of *Europe* are in such a complicated

complicated situation, and *Britain* in the greatest danger of being involved in a war. Is this a time to enfeeble instead of strengthening the hands of the executive power.

Do those who would deprive government of its vital force and energy, fetter the genius, and cramp the resources, prostrate the dignity, and perhaps endanger the salvation of the *British* Empire, to gratify their own spleen, or provide for themselves a return to station and emolument; do they deserve the applauses which have been lavished on them by the multitude?

It cannot be thought or supposed, and therefore would not, I should hope, be insinuated, that any particular interference of Parliament is necessary, to secure to his Majesty the full exercise of his royal authority, whenever his indisposition shall happily be removed. The supposition of any such necessity is an atrocious libel on his Royal Highness the *Prince of Wales*. It does no less, than call in question the filial Duty, the Loyalty, the Patriotism, the Justice, and the good sense of that exalted Personage. *Is not the King's eldest son, the Heir Apparent of his kingdom, (as is justly expressed in that admirable letter of a great Personage) the person most bound to the maintenance of his Majesty's just prerogatives and authority, as well as most interested in the happiness, the prosperity, and the glory of his people?* Let us

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hear no more of a foul insinuation, too absurd and groundless to be swallowed by the meanest of the rabble.

A solicitude personal to his Majesty is profest, a desire of sparing his feelings, by preserving every thing in the same state; so that on his recovery from the present malady, there may exist as few circumstances, as possible, to mark the existence of his illness, or recall it to his mind. Such language is unprecedented in the English constitution. What bold individual shall dare to separate the interests of the King from the interests of the community? shall profess himself influenced by private gratitude, in a great public transaction; and avow, without the fear of punishment, that the private gratification of the King, and not the well-being of the state, shall be the rule of his conduct? And shall the wretched deluded people call the factious individual, who does so, the friend of the constitution?

But supposing this delicacy might be commendable were it real, or what it professes feasible, but yet Majesty will, of necessity, find many things altered during his absence, as I may call it; the exigencies of government will require it. It is paying so good a King but a bad compliment, to suppose that he could be gratified by finding the interests of his people sacrificed to such a point

point of delicacy ; that he would be pleased, to find public affairs ill administered, the vigour and strength of government relaxed, and every thing thrown into disorder, under pretence of keeping things in the same state his Majesty left them.

I appeal to the common sense of every man—has Mr. *Pitt's* conduct been answerable to his professions ? Will things be found in the same state ; should providence grant his Majesty's recovery, to the prayers of his people ? surely no. He will find an assumption of very great powers to the Houses of Lords and Commons ; strong decisions on abstract questions, that materially affect his prerogatives, and the rights of his august house ; and a signal and violent precedent of an interference of the legislative branches, unknown to the Constitution. It is easy to judge, whether his Majesty's feelings will be less wounded at all this, than at some alterations induced by a mere exercise of the executive power, and regular prerogative ; in the grant of offices, the creation of peers, or the dissolution of Parliament.

Let us now consider the proposed limitations of the power of the Regent ; comprehending a restriction as to the grant of pensions, and offices, for life, or in reversion ; and the creation of peers ; for with them only, I mean to trouble my readers.

The power of appointing his servants, and rewarding their services, seems to be necessarily and inseparably inherent in the character of chief magistrate ; as being absolutely requisite to the due performance of the functions. A restitution in this point would very nearly approach the usurpation of the long Parliament, when they drove Charles the first, to the last extremity, by claiming the appointment of the King's offices. Can a request thus restricted, expect to be served zealously or affectionately ? But supposing he should find in the attachment and fidelity of his ministers those resources, which are denied by the limitation of his powers ; is it just ? is it consistent with the honour of a great nation, to seal up the functions of public bounty, for an unlimited time, against merit, however distinguished ? to say to those who shall spend their talents, their fortunes, their health, and their lives, in the service of the State ; you must not hope, when you sink to rest after your honourable labours, any support for your families from that country which you have served, perhaps saved by your exertions ? We know, that the offspring of the most splendid and disinterested statesman *England* ever saw, must have felt the stings of penury, had not the gratitude of their country interfered to snatch them from distress. As to the grant of reversionary employments, there is in
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that, a saving to the public, a political economy ; inasmuch, as the families of those who have deserved well, may be provided for, by means of them, without burthening the nation, by an encrease of the pension list.

Titles of honour have ever been the proper rewards of distinguished merit, in the cabinet or the field. Many of the noble Lords in the British House of Peers, are living memorials of the high deserts, and eminent services, of their parents, and ancestors. The creation of Peers, is an undoubted flower of the crown, which cannot without disfiguring and disgracing it, be torn away. Such a measure at the same time, that it would be a great discouragement to virtuous actions, to learning and industry, and detrimental to the House of Peers itself, by preventing such frequent supplies from going into it, as the nature of such a body requires ; might be a means of changing the Constitution into an *aristocracy*, one of the worst sorts of slavery. Consider, I beseech you, to what a state the Regent may eventually be reduced by the proposed restriction. The Regency may by possibility continue a long time ; so that the power of creating peers may be expended during twenty, thirty, or forty years. And during all this time, an aristocracy may be maintained by the confederacy of two, or three great families,

families, which would form such a body among the Lords, as the crown would not be able to controul. And this would be facilitated by the diminution of number in the efflux of time. But there is a more immediate and pressing danger to be apprehended; at least, the case, which I shall put, is possible. Suppose a majority of the House of Peers, at the devotion of an ambitious subject, a turbulent and discontented spirit; thwarting the wisest counsels, impeding the most necessary measures, and conspiring to render *government difficult if not impracticable, in the hands of the person destined to represent the King's authority.* Suppose, a large revenue withdrawn from the interference of the Regent, and a number of offices of emolument and honour, made independent of him, and subjected to the sole and exclusive controul of another person; and suppose all the power and influence, thus withdrawn from the substitute of royalty; suppose it conferred on a man such as I have described, and turned by him against the executive power; in vain shall the chief magistrate look for aid to the wisdom and virtue of the *Commons*; a firm *phalanx*, will be opposed to him in the Lords, which shall frustrate his best intentions, and *render it impossible to carry on the executive government of the country.* It may be said, this is a degree of improbable criminality, a visionary phantom, of
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atrocious ambition ; but the prospect of the present.—“ *A project for introducing weakness, disorder, and insecurity in every branch of the administration of affairs ;—a project for dividing the Royal Family ; for separating the Court from the State, and thereby disjoining government from its accustomed support.*” All this has been perpetrated already, and may well justify our apprehensions for the future.

I forbear to enlarge on the two other restrictions ; they must fill every friend of the Constitution, with indignation and sorrow, as a precedent of an outrageous tearing asunder the supreme executive power ; that power, which, in contemplation of law and constitution, is *one, entire, and indivisible*. But they are not likely to be the subject of much discussion, in this kingdom, for the meridian of which I chiefly write ; and this pamphlet has already grown upon me, to an immoderate length ; perhaps many things in it might have been retrenched, many compressed ; but I write on the spur of the occasion, and haste is generally the parent of prolixity. During the delay of correction, the moment of being useful would pass away, to return no more.

I proceed to some reflections, which peculiarly suggest themselves to the people of *Ireland*. This country stands in a predicament different from that of any colonial or associated

associated state which antient or modern history can produce. It is connected with *Great Britain*, not by an union of incorporation; not by an union of subjection and dependence, *that* we have happily disclaimed; nor yet by an express fœderal union, no monument of such a compact exists; but by the unity of the executive power alone. As the executive binds together the two assemblies of Lords and Commons of the same kingdom, in one Parliament; so it connects two independent kingdoms in one empire. *Ireland* and *Britain* are members of the same body; one cannot be torn from the other, without disfiguring the exquisite beauty, perhaps endangering the vital existence of the whole.

Why are we told that we must lean and hearken after the example of *Britain*; we must adopt what has been done in the two Houses of the English Parliament?—If the *English* Parliament, on the discussion of questions which affect the very vitals of the constitution, acts conformably to law, and the true spirit of that constitution, as declared and established in 1688; we may, not literally copy them, we may, not blindly follow them; but we shall certainly meet and coincide with them; not as looking to what they may have done but adopting, I may say, kindred notions not lineally derivative, but collateral from a common stock.

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It is impossible, indeed, that what is done in *England* should be a strict rule, to be servilely and literally adopted by *Ireland*. The situation of this country being very peculiar, as I have observed; peculiar interests and duties will arise out of that situation, and suggest peculiar maxims of political conduct to the people. The same rule, must govern like, not dissimilar cases; and as this country differs so widely from *Britain* in her circumstances; it may be necessary, even though what was done in *Britain* might have been right, as respecting *Britain*, to vary from it here, when we come to consider what the exigencies and circumstances of this country may suggest or demand.

There are two events of which *Irishmen* should never lose sight;—The *glorious Revolution* of 1688, which finally and fully established the *British* constitution; and the no less glorious *Revolution* of 1782, which made that constitution our own, and invested us with full powers not only to enjoy, but to cherish, to protect, and to maintain it inviolate. These should be the landmarks of their conduct, the one gives the end, the other the means; the one makes them men, the other freemen.—Three great objects, then, offer themselves to the regards of *Irishmen*; objects which they are bound to hold fast as their existence, and defend with their best blood.—The connexion of this country with

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Great Britain;—the independency of the legislature of Ireland;—and the maintenance of the *British* constitution. The two first are peculiar to ourselves; the last is in common to us with every subject of the empire; but our mode of pursuing it, may be varied by our situation.

Of the mode of pursuing those objects, and the means to be employed, we alone are competent to judge. *Britain* being the more strong and powerful part of the empire, her interference to point out the means, or prescribe the mode, would totally destroy the substance. The greatest mischiefs may result to us from her meddling in our deliberations, on points of constitution; whereas, none can redound to her, from our keeping them free and unbiassed by dictation or controul. Let us divest ourselves therefore of all silly notions, that it is necessary to *copy here*, what has been done in *England*; notions which originate in a concealed treason against this country, in a lurking dereliction of the rights of *Ireland*. The mode and form of what has been done will I think be found impossible to be adopted in *Ireland*, and the substance inexpedient.

Every friend to the laws, the religion, the welfare of this country, must hold dear the connexion with *Great Britain*. Joined with her *we pursue the triumph, and partake the gale*;—disjoined we should become small
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among the nations. Our manners, our language, the ties of blood, and the vicinity of soil all point us out as parts of the same great empire. We form as it were a mighty arch, on which the august forms of Justice, Liberty, Commerce, Opulence, and Renown stand aloft and conspicuous to the eyes of the world. Of this arch the King the common Sovereign is the key stone, that binds the whole together ; but the pledge of union is not the name, but the reality of King ; the actual common exercise of the executive power, giving a communication of councils and a co-operation of national force. Power distinct from the personal exercise of it is nonsense ; a King, distinct from the exercise of his prerogative and authority, is a contradiction ; a King incapable of governing is a creature which the constitution knows not, such an incapacity therefore must be a political death. It is no matter whether the executive power is in the hands of King or Regent ; we are bound together within the circle of the same imperial crown ; it is the unity of the Chief Magistrate, and that alone, which connects the two kingdoms. Mr. *Pitt's* doctrine, which invests the two Houses of Parliament, in case of the King's indisposition, with a general discretion of appointing any person in the kingdom Regent, tends directly to separate the personal exercise of the executive power in the two countries ;

and wears away and attenuates the band of mutual association. Every measure, which renders less secure the lineal succession; which threatens to make the throne elective; threatens also a dissolution of the empire into its component parts.

The two Houses of Lords and Commons are equally independent, have equal rights and powers, in *Ireland*, with those which the correspondent assemblies possess in *England*. Now, if we copy the example of *England*, and entertain the abstract question, our declarations must be equally strong, or we shall be traitors to ourselves. It will be incumbent on us to declare, that it is the right and duty of the Lords and Commons of *Ireland*, to provide for the personal exercise of the executive power; but how shall we reconcile this with the solemn act of the legislature of this country, the act of *Recognition* of the 4th of *William* and *Mary*, which solemnly declares, that the executive power in the two countries shall be one and the same; and that *Ireland* shall be for ever annexed and united to the imperial crown of *England*?—How shall we avoid this dilemma?—The way is obvious;—by declining the discussion, of abstract questions big with such difficulties and mischiefs; and pursuing the simple, the legal, and constitutional mode of *addressing his Royal Highness the Prince of Wales, and praying him to assume the Government of this Realm.*

If the two Houses of Lords and Commons in this kingdom, either do not possess, or would be unwise in asserting the power of appointing a *Regent*; it follows, as a necessary consequence, that they cannot entertain any plan of restrictions or limitations of the power of the Regent; for the declaration of the abstract right is a postulate, a corner stone, on which the whole system of restrictions is founded; and if you take *that* away the fabric must fall to the ground. Besides, the professed object of the restrictions in *England* being to secure to his Majesty the immediate exercise of the Royal Authority, when it shall please God to remove his indisposition; they are wholly unnecessary here; his Majesty is already perfectly secured; for, by the act of recognition above mentioned, on his resuming the administration of affairs in *England*, he will immediately, and *ipso facto*, become invested with the executive power in *Ireland*.

Now, with respect to the independence of the legislature of this country. In addition to the jealousy, which the subjects, in any limited monarchy, must entertain of the influence of the crown; the people must be possessed with a well grounded apprehension, for it is grounded on long and sad experience, of the power, the claims, and usurpations of the *British Parliament*. That precious boon, which we rescued with difficulty

ficulty from the reluctant grasp of oppression, we are bound to transmit sacred and entire to our posterity. We are not to contend merely with the ambition of a monarch, or the corruption of his ministers; these are lighter mischiefs; their progress is slow, the forms of the constitution remain, and preserve in themselves the principles of purification. Our contest is with enemies, that require our utmost vigilance, and threaten to overwhelm the constitution at a blow;—with the pride and prejudices of the *British* nation; with the wakeful jealousy of commerce; the cruel spirit of monopoly, the illiberal intolerance of manufacture, and inveterate habits of unjust domination. The *British Parliament*, rankling from our late victory, and armed with a string of precedents to justify usurpation, waits to seize the moment of our weakness and inattention, and renew claims, which they so reluctantly abandoned.—What mound or barrier shall we oppose to the current, which has long set in against the wealth, the independence and general prosperity of this Kingdom? What, but the paternal care and affection of the common sovereign, the wisdom and firmness of his ministers?

We should be cautious, therefore, as we wish well to the *Independence of Ireland*, of admitting the principle, that the example of the *British Parliament* has any binding force,

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or authority in this country ; instead of copying, we should be proud to dissent from their conduct. First, because what has been done by them is *wrong in itself* ; next, because here is a solemn occasion of disclaiming the controul of the *British Parliament*. By dissenting from them, in this instance, we shall give a memorial of our independence to the latest posterity ; an assertion of the right, by an exercise of the power, decided, unequivocal, and strong, beyond a thousand oral or written declarations.

Would it be wise, ye friends of *Ireland*, to sacrifice the golden advantages of such a declaration of our independence, and yield to the suggestions of interested men, who would drive us into a discussion of abstract questions ? the discussion of abstract questions in *England* has been a struggle for power, a trial of party strength, at the expence of the constitution. What have we to do with the parties of *England* ? we have only one party, to pursue the good of our country. And the good of our country requires, that we should confer the executive power *free and unfettered on the Heir Apparent of the Crown*.

Why should we conspire to exalt the authority of the *British Parliament*, the great object of our fears, on the ruins of the executive power, the great source of our protection ? What can we expect, when the claims
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of the *British Legislature* shall have swallowed up the legal powers, and constitutional prerogatives of the crown; but the poor favour of being the last devoured?—We have now such an opportunity, as seldom occurs, given us by the strange and unconstitutional conduct of Mr. *Pitt's* party in *England*; we have an opportunity of conciliating the affections of the Heir Apparent of the crown, by an assertion of our own rights. Let us seize the occasion; we may frequently be driven to throw ourselves on the affection, and good offices of our sovereign; let us now purchase them before hand; by throwing *Ireland* into the scale of his influence; and as far as in us lies rescuing the executive, from the encroachments of the legislative power.

It was thus the Commons of *England* rose to consideration and greatness; the King looked about for aid, to protect him against the overweening power and rude encroachments of his Barons: He drew forth the third estate of the people, from the depths of the lowest obscurity: he gave them a weight and influence in the community, and the Commons repaid with interest, that strength, security, and consequence which they derived from the crown.—Who knows but something similar may happen with respect to *Ireland*, from a similar reprocation of good offices?

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I come now to the third great object in the consideration of *Irishmen*, *that*, to which the two former are subordinate and ancillary, the maintenance of the *British Constitution*, of which we are now made partakers. And on Constitutional principles, it is manifest, that we cannot possibly adopt Mr. *Pitt's* plan of providing for the temporary vacancy of the *Throne*. To give, is to legislate, to appoint a Regent is an act of legislation. But it is confessed that the Parliament of this kingdom wants the third component part, which is necessary to give it legislative validity. Mr. *Pitt's plan*, is to appoint the Regent by bill. It is impossible on Mr. *Pitt's* principles, to give the royal assent to such a bill; without assenting a controul, of the *British* over the *Irish Parliament*; for the Regent, according to him, being merely the creature of the Parliament, deriving the authority, not from any thing inherent in himself, but solely from their appointment, his authority is, in fact, the authority of Parliament; and thus must the *British* Parliament, on Mr. *Pitt's* principles, have an affirmative, or negative, on the acts of the *Irish* Parliament, with respect to the Regency.

And when we speak of Constitution; can it be forgotten under whose auspices this land was emancipated? Through whom are we enabled to debate the high and mo-

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mentous subjects of the present? Is it not through the ministration of those men, who now share the councils, and enjoy the confidence of his Royal Highness the Prince of Wales? Through them, are we placed in our present situation of independence: and a proud and dignified situation it is,

*Quod optanti nemo promittere Divum auederet,
Valveuda Dies en attulit ultro.*

What the utmost stretch of enthusiastic speculation could not dare to promise to the champions of *Irish* independence, the chance of the day has brought within our grasp. We now can pay to Great Britain the full price of the boon, which we demanded from her. At this awful crisis of her fate, her Genius looks up to us with reverential anxiety, though with sisterly confidence; she calls upon Ireland to defend that Constitution which she had built up for us, and the blessings of which she has shared with us, against a desperate faction, which has extinguished all her energy, and crushed her adherents. At such a moment, can we be insensible of our own importance? Shall we not know our own value, or refuse to be just to ourselves, and to the trust which we have assumed, and sworn as at the altar, to transmit to our descendants.

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To value any blessing aright, we must first understand it : What did *Irishmen* obtain by the Revolution of 1782 ? What did we gain by the eloquence of our public leaders, the firmness of Parliament, and the exertions of the people ? Was it a share of faction ? Was it a moiety of civil discord, a sister's portion of cabal and anarchy ? No ; God forbid. It was a participation in that happy Constitution, which is the consummate work of ages, and the boast of human wisdom. Was the nation pledged ? Did we so boldly pass the *Rubicon* ? to win the poor privilege of being the retainers of an *English* party, the satellites of an aspiring Minister—the humble instruments of his ambition, to be wielded at the discretion of a servile delegate ? No : we demanded, and we obtained a Constitution, as it was settled by the *bill of rights* ; a Constitution where King, Lords, and Commons, balance, controul, and support each other. A Constitution which we pledged ourselves to defend, on the principles, on which we found it seated, while we secured to ourselves the power of standing to our pledges, and fulfilling our engagements. I cannot place this great and glorious truth in too many different lights ; we are not only the guardians of our own liberties, but the guarantees of those of *Britain* : the *British Constitution* cannot be invaded, without sapping the foundation of our

Constitution, and every assertion of our rights, must lend a new security to those of *Englishmen*.

Where then shall we find any man, or set of men, hardy enough to call upon us to concur in violating the Constitution, in transferring the rights of the Sovereign to the two remaining estates of Parliament, and confounding the executive power with the legislative? If a Convention in *Great Britain* hath been guilty of such a violence, we will shew our attachment to that country, by dissenting from her example—we will all stand forth, as one man, to oppose a barrier to the invasion; and the vital spirits, and the warm blood of the Constitution having circulated through *Ireland*, as an extremity, will return, to warm and cherish *Britain*, as the heart.

The answer, therefore, which we have to make to those who tell us, that we must follow the example of Britain—we *must* adopt what has been done in the two Houses of the *British* Parliament, is this—"If the *British* Parliament lose sight of Constitutional principles; if it have recourse to new maxims, and establish principles destructive of those, on which the Constitution we obtained from *Britain* was founded; we will defend them against her Parliament; we will read a lesson of Constitution to the parent country, and
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awake her drooping spirit, into a recollection of those days, when other councils, and other men ministered to her under unforeseen emergencies."

No, my Countrymen, in our demand of a free Constitution, we were not candidates for our disgrace. If we do not use that Constitution wisely, better were it that we had never obtained it. If it is to be mangled and disfigured, better were it to have remained passive and subservient; to be still exiled from our Birth-right, that we might now view the unhallowed spectacle, at a distance, instead of joining in the tragedy. But we will, I know we will, use that Constitution wisely and tenderly; we will yield her an asylum, when expelled from Britain. We will snatch her to our hearts. We will cherish her in our bosoms. We will verify the words of our illustrious countryman and patriot, in such a degree, that they shall seem to have been dictated by the immediate influence of a patriotic spirit.

"Admit us at once, (said he, addressing himself to England) into the possession of
 "our birth-right, the vigour of our youth
 'will be the prop of your old age; give us
 "the power, and the most glorious service
 "in which it will be our pride to employ it,
 "will be in supporting the crazy frame of
 "your Constitution." We are put in possession

session of the birth-right, we enjoy the power; let us shew the same spirit that actuated us when the prophecy was uttered, and let our *power* be exerted in defending the *rights* which this spirit secured to us in the day of our triumph.

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